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Office Action Summary

Application No.

10/706,136

Applicant(s)

PECK, GARY AMES

Examiner

Stephen J. Castellano

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-38 is/are pending in the application.
- 4a) Of the above claim(s) 10 and 33-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-9, 11, 13-21, 24, 25, 27-32 is/are rejected.
- 7) ☒ Claim(s) 12, 22, 23 and 26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.



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Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 10 and 33-38 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 14, 2006.

Claims 1, 2 and 5-8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Williams et al. (Williams).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-9, 13 and 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams in view of Mitchell.

Williams discloses the invention except for a double walled retainer wall. Mitchell teaches a double walled retainer wall. It would have been obvious to add the double wall to reinforce the outer perimeter of the receptacle and add strength and stability to the receptacle. See col. 3, lines 37-42 for a full description of Mitchell's inner wall 37, outer wall 39 and hollow 40. As best shown by the cross sections of Fig. 7-9, the outer wall 39 tapers outwardly at the bottom when Mitchell is used as a tray.

Re claim 9, Williams discloses the invention except for protruding ridge of the metal paint container. The Official notice taken in the Office action mailed June 8, 2006 that metal paint containers and bottom sidewall outwardly protruding ridges for paint containers are well known has not been challenged. The Official notice will now be treated as a prior art admission.

It would have been obvious to modify the paint container to be metal and to have a bottom sidewall outwardly protruding ridge to provide a container that secures in a stable manner with the topple resistant receptacle of the kit.

Re claim 13, Williams discloses the invention except for the size. It would have been obvious to modify the size of the topple resistant receptacle to be at least equal to two times the surface area of the bottom of a gallon container as a matter of design choice in selecting a size large enough to retain the volume of a full gallon paint can if such should spill.

Re claims 27-31, Williams discloses the invention except for the adapter plate and the ladder hook. The Official notice taken in the Office action mailed June 8, 2006 that adapter plates and ladder hooks are well known has not been challenged. The Official notice is now treated as a prior art admission. It would have been obvious to add the adapter plate to provide a means to convert the circular attachment to a rectangular attachment. It would have been obvious to add the ladder hook to suspend the receptacle from a ladder.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Williams in view of Mitchell as applied to claim 1 above, and further in view of Demitry.

Williams discloses the invention except for the oblong nature of the receptacle. Demitry teaches an oblong receptacle with rounded end and flat end. It would have been obvious to add an area for a brush support which is rectangular and to make the rectangular receptacle circular such that one end is rounded while the brush support is located at a flat end in order to provide a space to rest a brush.

Claims 14-21, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams in view of Mitchell as applied to claim 1 above, and further in view of Pool.

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Williams discloses the invention except for the slot shield. Pool teaches a slot shield. It would have been obvious to add the slot shield to prevent paint from clogging the upper rim of the paint can.

Claims 12, 22, 23 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's arguments filed April 30, 2007 have been fully considered but they are not persuasive. Applicant's description of Mitchell is inaccurate. Applicant identifies visibility as a primary reason for the double wall configuration. This is absolutely not true. The double wall configuration of Mitchell actually hinders the visibility (ability to see spilled fluid accumulating in tray) as the double wall is much thicker than a single wall. A single wall design would have improved visibility at the expense of sufficient strength. See col. 4, lines 26-34 for the visibility mentioned in Mitchell. The visibility is not related to the double wall design.

Applicant is correct in stating that the hollows of Mitchell are all in communication. However, applicant is incorrect in stating that the hollows collect spilled fluid. Rather, the hollows are filled with air. The specification implies that the hollows act somewhat like an inflated tire with air trapped therein. The tray is structurally supported by a column of air within the blow molded hollows. Even without the column of air, the tray has a double wall and two walls are stronger than a single wall. See col. 3, lines 50-62 for discussion of the blow molded double wall design and the reasoning that this arrangement provides strength and distribution of forces (equal distribution of forces so that the tray is not likely fail in any particular area).

The tapered outwardly at the bottom design of the outer wall 39 provides an increase in stability of the tray resisting toppling of the tray.

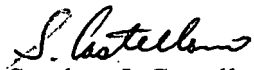
In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc